Petition

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No.

Supreme Court of the United States

October Term, 1981

INDUSTRIAL PERSONNEL CORP.,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals
For the Eighth Circuit

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QUESTION PRESENTED FOR REVIEW

1. Is the test adopted by the Eighth Circuit Court of Appeals relative to reviewing determinations of administrative agencies in direct contradiction of the standard contained in Section 10(e) of the National Labor Relations Act and delineated by the Supreme Court of the United States in the case of *Universal Camera Corp. v. NLRB*, 340 U.S. 474 (1951)?

PARTIES APPEARING BEFORE THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Petitioner, Industrial Personnel Corp., was a Respondent in both administrative proceedings below (16-RC-8003 and 16-CA-8925; 250 NLRB No. 119) and was the Petitioner before the United States Court of Appeals for the Eighth Circuit in Case No. 80-1758. Industrial Personnel Corp. is hereinafter referred to as "IPC."

The BFGoodrich Company was a Respondent in both administrative proceedings mentioned above and was also a Petitioner before the United States Court of Appeals for the Eighth Circuit in Case No. 80-1759 which was joined with the petition of Industrial Personnel Corp. mentioned hereinabove which was entitled Case No. 80-1758. The BFGoodrich Company is hereinafter referred to as "Goodrich."

The National Labor Relations Board was the administrative agency charged with deciding all issues relating to Cases 16-RC-8003 and 16-CA-8925 (250 NLRB No. 119). The National Labor Relations Board was the Respondent in Case Nos. 80-1758 and 80-1759 before the United States Court of Appeals for the Eighth Circuit. The National Labor Relations Board is hereinafter referred to as "NLRB."

The General Drivers and Helpers Local Union No. 823, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America was the Petitioner and Charging Party in Case Nos. 16-RC-8003 and 16-CA-8925 (250 NLRB No. 119), respectively. The General Drivers and Helpers Union No. 823, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America is hereinafter referred to as the "Union."

STATEMENT OF CORPORATE AFFILIATION

Industrial Personnel Corp. (hereinafter referred to as "IPC") is a West Virginia corporation. It is a wholly-owned subsidiary of Leaseway Transportation Corp. Leaseway Transportation Corp. is a Delaware corporation and in addition to IPC also owns the following subsidiaries:

A. C. Transport, Inc.
A. J. Warehouse, Inc.
A. R. Gundry, Inc.
A & S H D Service Corp.
A To Z Cartage Co.
Affiliated-Leaseway, Inc.
Akron Distribution Centers, Inc.
Akron Fleet Service, Inc.
Alameda Lease, Inc.
Anchor Motor Freight, Inc.
Associated Consultants, Inc.
Balser Truck Co.
Bejin Trucking Company
Best Transport, Inc.
Better Home Deliveries, Inc.
Boston Deliveries, Inc.
Bulk Freightways
California Truck Rental Company
Charlton Transport Limited
Chicago Haulage, Inc.
Commercial Motor, Inc.
Contract Trucking Corporation
Cooke Warehouses, Inc.
Courier Service, Inc.
Custom Deliveries, Inc.

Dayton Leasing, Inc.
Dedicated Freight Systems, Inc.
Electronics Transfer, Inc.
Elmhurst Maintenance, Inc.
Essential Trucking, Inc.
Executive Auto Leasing, Inc.
510 W. 21 St. Corp.
Fleet Maintenance, Inc.
Fork Truck Leasing, Inc.
Fruit Belt Motor Service, Inc.
Fuel & Maintenance, Inc.
General Trucking Service, Inc.
Geo. McNeil Teaming Company
Gypsum Haulage, Inc.
Howard Lease, Inc.
Industrial Leasing Corporation
Jeffers Transport Co. Limited
Leaseway of Akron, Inc.
Leaseway All-Services, Inc.
Leaseway of Arizona, Inc.
Leaseway of Arkansas, Inc.
Leaseway Cars, Inc.
Leaseway of Chicago, Inc.
Leaseway Consultants Corp.
Leaseway Deliveries, Inc.
Leaseway of Detroit, Inc.
Leaseway Distribution Centers, Inc.
Leaseway-Empire, Inc.
Leaseway Finance Corp.
Leaseway of Georgia, Inc.
Leaseway Haulers, Inc.

Leaseway Hudson, Inc.
Leaseway of Illinois, Inc.
Leaseway Information Systems, Inc.
Leaseway International Corp
Leaseway Investments, Inc.
Leaseway Leasing, Inc.
Leaseway Ltd.
Leaseway of Louisiana, Inc.
Leaseway of Mississippi, Inc.
Leaseway National Service Corp.
Leaseway of New England, Inc.
Leaseway of Northern California, Inc.
Leaseway of Ohio, Inc.
Leaseway Park East Corp.
Leaseway Parts & Equipment, Inc.
Leaseway Personnel, Inc.
Leaseway of Philadelphia, Inc.
Leaseway of Pittsburgh, Inc.
Leaseway of Puerto Rico, Inc.
Leaseway of Savannah, Inc.
Leaseway-Southwest, Inc.
Leaseway Supplies Corp.
Leaseway Switching Services, Inc.
Leaseway System of Baltimore, Inc.
Leaseway System Corp.
Leaseway System, Inc.
Leaseway System of Michigan, Inc.
Leaseway of Tennessee, Inc.
Leaseway Transportation Finance N.V.
Leaseway Transportation Leasing Corp.
Leaseway Transportation Marketing Corp.

Leaseway Trucking, Inc.
Leaseway of Virginia, Inc.
Leaseway Warehouses of California, Inc.
Leaseway Warehouses, Inc.
Leaseway of Wisconsin, Inc.
Lightning Warehouses, Inc.
LDF, Inc.
L M Leasing, Inc.
Logistics Resource, Inc.
Mahoning Leasing Service, Inc.
Marsh & Race Motor Lines Corp.
Max Binswanger Trucking
Max Lyn Corp.
McLarty Leasing System, Inc.
Melchin Auto Transport Ltd.
M H D Services, Inc.
Mileage Consultants, Inc.
Mission Leasing, Inc.
Mitchell Transport, Inc.
Mohawk Leasing, Inc.
Motor Leasing New York Corp.
M. V. Leasing Corporation
Northern California Warehouse, Inc.
Northern Ohio Materials, Inc.
Oak Leasing, Inc.
Ohio Truck Rental, Inc.
Pep Lines Trucking Co.
PHd Corporation
Pipeline Leasing Corp.
Preferred Truck Leasing, Inc.
Quick Deliveries, Inc.

Ray Molder Carrier Corporation
Ray Molder, Inc.
Refiners Transport & Terminal Corporation
Regal Delivery Service, Inc.
Rentrux, Inc.
Reserve Terminals Company
Santa Fe Delivery Service, Inc.
Savannah Service, Inc.
Signal Delivery Service, Inc.
Specialized Leasing, Inc.
Stam-Win, Inc.
Sugar Transport, Inc.
Supplies, Inc.
S. W. Transportation Corp.
Terminal Personnel, Inc.
T-I Company
Tiger Leasing, Inc.
Trac-Steel, Inc.
Trans Cleveland Warehouses, Inc.
Trans-Columbus Distribution, Inc.
Transport, Inc.
Transportation Engineering Consulting Corporation
Transportation Engineering, Inc.
Transportation House, Inc.
Transportation Service, Inc. of Maryland
Transportation Supplies, Inc.
Tropical Transport, Inc.
Truck Maintenance, Inc.
Union Terminal Warehouse, Inc.
United Home Delivery, Inc.
Universal Leaseway System of Canada Ltd.

Vehicle Leasing, Inc.
Vernon Equipment, Inc.
Voncille Truck Leasing Company
West Coast Leaseway System, Inc.
Westland Auto Terminals Ltd.
Wilhelm Truck Leasing Co.

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PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals For the Eighth Circuit

The Petitioner, Industrial Personnel Corp., respectfully prays that a Writ of Certiorari issue to review that judgment and opinion of the United States Court of Appeals for the Eighth Circuit entered in the above-captioned matter, bearing Case No. 80-1758, on the 26th day of August, 1981; rehearing denied October 5, 1981.

OPINIONS BELOW

The determination in NLRB proceeding No. 16-RC-8003 is contained in the Appendix at pages A9-A14. The decision rendered by the NLRB in Case No. 16-CA-8925 (250 NLRB No. 119) is contained in the Appendix at pages A15-A28. The decision of the United States Court of Appeals for the Eighth Circuit is contained in the Appendix at pages

A1-A8. The decision of the United States Court of Appeals for the Eighth Circuit denying IPC's motion for rehearing en banc is contained in the Appendix at page A29. The decision of the United States Court of Appeals for the Eighth Circuit granting IPC's motion for a Stay of Issuance of Mandate is contained in the Appendix at page A30.

STATEMENT OF JURISDICTION

The Court's jurisdiction is invoked under 28 U.S.C. 1254 (1).

> §1254. Courts of appeals; certiorari; appeals; certified questions
>
> Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:
>
> (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

STATUTORY PROVISIONS INVOLVED

National Labor Relations Act, as amended, 29 U.S.C. §§151, et seq.:

> [Sec. 10(e)—Petition to Court for Enforcement of Order; Proceedings; Review of Judgment]
>
> (e) The Board shall have power to petition any United States court of appeals, or if all the United States courts of appeals to which application may be made are in vacation, any district court of the United States, within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business,

for the enforcement of such order and for appropriate temporary relief or restraining order, and shall file in the court the record in the proceedings, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the record. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact *if supported by substantial evidence on the record considered as a whole shall be conclusive*, and shall file its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of

> the record with it the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate United States court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28. *Id.* (emphasis added).

STATEMENT OF THE CASE

On August 24, 1979, the Union filed a representation petition (16-RC-8003) with the NLRB requesting an election. In its petition, the Union named Goodrich and IPC as joint employers of IPC's employees who are domiciled in Tulsa, Oklahoma. During the representation hearing conducted by the NLRB, two main issues were presented: first, whether the signed collective bargaining agreement between IPC and the Union covering the unit in question constituted a bar to the election; and second, whether based upon the facts presented, IPC and Goodrich were, as a matter of law, joint employers.

Following the conclusion of the hearing, the Regional Director for Region 16 issued his Decision (Appendix pp. A15-A28) wherein he determined that IPC and Goodrich were joint employers and that the existing collective bargaining agreement did not constitute a bar to an election. Thereafter, Plaintiff, IPC, and Goodrich requested that the NLRB review the Regional Director's decision. This request was summarily denied. IPC then filed a Motion for Reconsideration which was also summarily denied.

At that time, IPC and the Union had begun negotiations to renew the existing collective bargaining agreement which was to expire on May 22, 1980. The Union, subse-

quently, filed an unfair labor practice charge against Goodrich and IPC alleging that Goodrich and IPC had violated Sections 8(a)(1) and (5) of the National Labor Relations Act (hereinafter "NLRA") 29 U.S.C. §158(a)(1) and (5) by refusing to bargain with the Union as joint employers. IPC answered the charge by stating that it has always recognized the Union as the bargaining agent for the employees in question and further, that it was currently bargaining with the Union to renew the collective bargaining agreement, which was to expire on May 22, 1980.

The Regional Director issued a Complaint against both IPC and Goodrich alleging various NLRA violations. After the Complaint was issued, the General Counsel moved for summary judgment. The NLRB ordered IPC and Goodrich to show cause why the Motion for Summary Judgment should not be granted. Both IPC and Goodrich filed exhaustive briefs opposing summary judgment and Goodrich requested summary judgment in its own right. Thereafter, the NLRB granted summary judgment in favor of the General Counsel and issued its Decision and Order, 250 NLRB No. 119, in which it held that IPC and Goodrich had engaged in various violations of the NLRA by refusing to bargain jointly with the Union (Appendix pp. A15-A28).

Petitioner IPC timely filed a Request for Review of the NLRB's decision with the United States Court of Appeals for the Eighth Circuit bearing Case No. 80-1758. Goodrich also timely filed a Request for Review of that decision with the same Court bearing Case No. 80-1759. Subsequently, Respondent NLRB filed: (1) a Motion for the Consolidation of Case Nos. 80-1758 and 80-1759, and (2) a cross application for enforcement of an order of the National Labor Relations Board. Petitioners IPC and Goodrich agreed to the consolidation.

Oral arguments were presented to the Court below. On the 26th day of August, 1981, the Eighth Circuit filed its decision denying both IPC's and Goodrich's petitions for review and enforced the NLRB's order. IPC and Goodrich subsequently both filed petitions for rehearing with suggestions that the rehearing be en banc. The Eighth Circuit denied both petitions on the 5th day of October, 1981. Subsequently, both IPC and Goodrich filed Motions to Stay Issuance of Mandate until such a time as this Honorable Court reviews their respective petitions for certiorari. IPC's Motion to Stay Issuance of Mandate was granted by the Court below on October 26, 1981, for an effective period of sixty days.

REASONS FOR ALLOWANCE OF THE WRIT

I. The Eighth Circuit Court of Appeals Has Rejected the Standard of Proof Contained in Section 10(e) of the National Labor Relations Act and Delineated by the Supreme Court of the United States in Universal Camera Corp. v. NLRB, 340 U.S. 474 (1951).

In reviewing a decision rendered by the NLRB, a Court of Appeals is bound to determine whether the NLRB's finding "is supported by substantial evidence on the record considered as a whole." 340 U.S. at 490. The Supreme Court speaking through Justice Frankfurter held:

> We conclude, therefore, that the Administrative Procedure Act and the Taft-Hartley Act direct that courts must now assume more responsibility for the reasonableness and fairness of Labor Board decisions than some courts have shown in the past. *Reviewing courts must be influenced by a feeling that they are not to abdicate the conventional judicial function.*

> *Congress has imposed on them responsibility for assuring that the Board keeps within reasonable grounds. That responsibility is not less real because it is limited to enforcing the requirement that evidence appear substantial when viewed, on the record as a whole, by courts invested with the authority and enjoying the prestige of the Courts of Appeals.* The Board's findings are entitled to respect; but they must nonetheless be set aside when the record before a Court of Appeals clearly precludes the Board's decision from being justified by a fair estimate of the worth of the testimony of witnesses or its informed judgment on matters within its special competence or both.
>
> * * * * *
>
> *Whether on the record as a whole there is substantial evidence to support agency findings is a question which Congress has placed in the keeping of the Courts of Appeals. Id.* at 490, 491 (emphasis added).

In so ruling, the Supreme Court determined that the decisions rendered by the NLRB shall be scrutinized in the same manner as any decision rendered by any other administrative agency under the Administrative Procedure Act.

> It would be mischievous word-playing to find that the scope of review under the Taft-Hartley Act is any different from that under the Administrative Procedure Act. The Senate Committee which reported the review clause of the Taft-Hartley Act expressly indicated that the two standards were to conform in this regard, and the wording of the two Acts is for purposes of judicial administration identical. *And so we hold that the standard of proof specifically required of the Labor Board by the Taft-Hartley Act is the same*

> *as that to be exacted by courts reviewing every administrative action subject to the Administrative Procedure Act.* *Id.* at 487 (emphasis added).

Thus, the provisions pertaining to judicial review of determinations rendered by the NLRB as contained in §10(e) of the NLRA are the same as that contained in the Administrative Procedure Act.

In addressing the specific question as to what constitutes substantial fact, Frankfurter ruled:

> *The substantiality of evidence must take into account whatever in the record fairly detracts from its weight.* This is clearly the significance of the requirement in both statutes that courts consider the whole record.
>
> * * * * *
>
> To be sure, the requirement of canvassing "the whole record" in order to ascertain substantiality does not furnish a calculus of value by which a reviewing court can assess the evidence. Nor was it intended to negative the function of the Labor Board as one of those agencies presumably equipped or informed by experience to deal with a specialized field of knowledge, whose findings within that field carry the authority of an expertness which courts do not possess and therefore, must respect. Nor does it mean that even as to matters not requiring expertise a court may displace the Board's choice between two fairly conflicting views, even though the court would justifiably have made a different choice had the matter been before it *de novo.* *Congress has merely made it clear that a reviewing court is not barred from setting aside a Board decision when it cannot conscientiously find that the evidence supporting that decision is substantial,*

> *when viewed in the light that the record in its entirety furnishes, including the body of evidence opposed to the Board's view.* *Id.* at 488 (emphasis added).

Justice Frankfurter, in a subsequent decision rendered in *NLRB v. Pittsburgh Steamship Co.*, 340 U.S. 498 (1951), further explained the requirements of "substantial evidence." The Court held:

> The same consideration that should lead us to leave undisturbed, by denying certiorari, decision of Courts of Appeals involving solely a fair assessment of a record on the issue of unsubstantiality ought to lead us to do no more than decide that there was such a fair assessment when the case is here, as this is, on other legal issues. *Id.* at 502, 503.

In summation, then the function of the reviewing Court is to review the record in its entirety to determine whether the evidence supporting the NLRB's decision is substantial.

In the instant case, the Court of Appeals for the Eighth Circuit has rejected the standard for review as contained in §10(e) of the NLRA and interpreted by the Supreme Court in *Universal Camera Corp.* The Court of Appeals has sustained a determination rendered by the NLRB wherein the Board's decision is supported solely by presumed facts and possible eventualities. The Court of Appeals and the NLRB have improperly based their opinions upon possible eventualities characterized in the record as "may's", "presumably's", and "inevitably's." This is a wholly improper test and constitutes reversible error. *NLRB v. Columbian Enameling & Stamping Co.*, 306 U.S. 292 (1939); *Dannen Grain & Milling Co. v. NLRB*, 130 F.2d 321 (8th Cir. 1942); *NLRB v. International Shoe Co.*, 116 F.2d 31 (8th Cir. 1940); *Cupples Company Manufacturers v. NLRB*, 106 F.2d 100 (8th Cir. 1939); *NLRB v. Abell Co., A. S.*, 97 F.2d 951 (4th

Cir. 1938); *Appalachian Electric Power Co. v. NLRB*, 93 F.2d 985 (4th Cir. 1938); *Ballston-Stillwater Knitting Co., Inc. v. NLRB*, 98 F.2d 758 (2nd Cir. 1938); *NLRB v. Goshen Rubber and Mfg. Co.*, 110 F.2d 432 (7th Cir. 1940); *Jefferson Electric Co. v. NLRB*, 102 F.2d 949 (7th Cir. 1939); *Magnolia Petroleum Co. v. NLRB*, 112 F.2d 545 (5th Cir. 1940); *Martel Mills Corp. v. NLRB*, 114 F.2d 624 (4th Cir. 1940); *NLRB v. Times-Picayune Pub. Co.*, 130 F.2d 257 (5th Cir. 1942); *Quaker State Oil Refining Corp. v. NLRB*, 119 F.2d 631 (3rd Cir. 1941); *NLRB v. Regal Knitwear Co.*, 140 F.2d 746 (2nd Cir. 1944); *West Virginia Glass & Specialty Co. v. NLRB*, 134 F.2d 551 (4th Cir. 1943).

IPC's appeal of the decision rendered by the NLRB was based on the premise that the record does not contain "substantial evidence" to substantiate the co-employer determination as rendered by the administrative agency. Further, the Eighth Circuit Court of Appeals has chosen to adopt the NLRB's conclusions without searching the record for support. The Eighth Circuit's opinion is based solely on presumption and speculation. It is the position of IPC that the record is wholly devoid of any support for the NLRB's findings.

It is conceded by IPC that the NLRB is permitted to draw inferences from facts established in the record. *NLRB v. Southern Bell Telephone Co.*, 319 U.S. 50 (1943). However, for inferences to be drawn, *facts must be present.* As the Sixth Circuit Court of Appeals stated in the case of *NLRB v. Hudson Motor Car Co.*, 128 F.2d 528 (6th Cir. 1942):

> *There are so-called 'primary facts', matters which can be established by direct testimony, and there are 'ultimate facts' which must be arrived at by a process of inferences from the primary facts.* For example,

> the question of whether or not respondent in the case at bar lent its aid to 154 C. I. O., is a primary fact but the question of whether or not respondent lent such aid because it preferred this organization to 154 A. F. of L. or because it felt compelled to do so to prevent the loss and destruction of its business, depends upon a series of inferences from the primary facts. *Id.* at 532 (emphasis added).

Therefore, before the NLRB is permitted to reach conclusions based upon inferences, it must be able to point to facts in the record which will support the inferences. *Osceola County Co-operative Creamery Assn. v. NLRB*, 251 F.2d 62 (8th Cir. 1958); *NLRB v. Miami Coca-Cola Bottling Co.*, 222 F.2d 341 (5th Cir. 1955); *NLRB v. Camco, Inc.*, 340 F.2d 803, *cert. denied*, 382 U.S. 926 (1965); *Poultry Enterprises, Inc. v. NLRB*, 216 F.2d 798 (5th Cir. 1954).

The federal judiciary has consistently ruled that it is the proper function of a Court of Appeals to overrule a determination of the NLRB wherein the inferences drawn by the NLRB are not reasonable in light of the record considered as a whole. *NLRB v. Pittsburgh Steamship Co.*, 340 U.S. 498 (1951); *NLRB v. Coats & Clark, Inc.*, 231 F.2d 567 (5th Cir. 1956); *Wyerhauser Co. v. NLRB*, 311 F.2d 19 (7th Cir. 1962). In reviewing the record, the Court of Appeals must not only scrutinize the evidence which supports the NLRB's finding but must also take into account facts in the record which destroy those inferences. *Universal Camera Corp. v. NLRB, supra; Packinghouse Workers, Local Union No. 3 v. NLRB*, 210 F.2d 325 (8th Cir. 1954); *NLRB v. Gala-MoArts, Inc.*, 232 F.2d 102 (8th Cir. 1956).

Universal Camera Corp. and its progeny wholly prohibit any attempt by a governmental agency to make legal

conclusions which are based on "may's", "presumably's", and "inevitably's." The *Universal Camera Corp.* line of decisions stands for the proposition that in NLRB determinations relating to questions of joint employer issues the record must contain cold, hard facts (i.e., "substantial evidence"), illustrating the existence of (1) centralized control of labor relations, (2) interrelation of operations, (3) common management, and (4) common ownership or financial control between the purported joint employers. *Pulitzer Publishing Co. v. NLRB,* 618 F.2d 1275 (8th Cir. 1980). Courts and agencies are expressly not permitted to use presumptions and assumptions in finding the existence of such criteria as the NLRB and the Court of Appeals have done in the instant action.

Referring to *Pulitzer,* the Court of Appeals correctly states in its Opinion that in order for a co-employer decision to be sustained with respect to "two nominally separate businesses" four criteria must exist: "(1) some functional interrelation of operations, (2) centralized control of labor relations, (3) common management, and (4) common ownership or financial control." (Appendix p. A4). A court's role is then to search the record to determine if there is substantial evidence which proves the existence of these four criteria.

The Court's Opinion becomes its own undoing. The Eighth Circuit Court of Appeals, in its footnote 3, readily admits that factors (3) and (4), *supra,* were not established by the Union (Appendix p. A8). The Court in its Opinion recognized that there is "little centralized control of labor relations" (Appendix p. A7). The Court states that "Goodrich *may* on occasion get into this area" although the record is devoid of a single instance where Goodrich has become involved in IPC's labor relations. Thus, the NLRB and the Court of Appeals agree that the Union was

unable to establish with substantial evidence of the existence of the second criteria cited above in *Pulitzer*.

It is conceded then that the only possible existence of substantial evidence showing a co-employer relationship will be facts which show the existence of categories (1) and possibly (2). Initially, it must be stated that the basis of the *Pulitzer* test even if the NLRB were able to show substantial evidence supporting the existence of both criteria (1) and (2) such would not be enough. The prior case law requires the existence of all four criteria which the NLRB and the Court of Appeals readily admit were not proven in the record. However, assuming *arguendo*, the NLRB is permitted to prove a joint employer relationship solely on the existence of criteria (1) and (2), then the NLRB has still failed to establish substantial evidence of the existence of criteria (1) and (2). Looking to the record, it becomes readily apparent that the NLRB has wholly failed in establishing primary facts:

a. *May*: The Court of Appeals held that "Goodrich *may* on occasion get into this area [centralized control of labor relations]." Opinion A7. The record before the Regional Director does not support such a finding. The record is devoid of any indication that Goodrich has ever, in fact, become involved in the labor relations of IPC. In order to sustain the agency's finding of fact, the NLRB's determination must be "supported by substantial evidence in the record as a whole." The test enunciated by the Supreme Court of the United States in *Universal Camera Corp.* is clear and unambiguous. However, the Court of Appeals has based its decision on the fact that Goodrich *may* on occasion become involved in this area even though the record is devoid of a single indication that Goodrich ever has, in fact, become so involved.

The NLRB and the Court of Appeals must not be permitted to sustain an administrative agency determination which is based on a "may" presumption. *Universal Camera Corp.* and the myriad of cases cited hereinabove requires the existence of substantial evidence to support an administrative agency's determination. A presumption as found in the use of the qualifying word "may" cannot qualify as "substantial evidence" or "primary fact" upon which a joint employer determination can be based. Therefore, clearly, pursuant to the dictates of *Universal Camera Corp.*, the finding by the Court of Appeals that there "may" be centralized control of labor relations is wholly unsupported by the record. Further, the use of the term "may" by the Court of Appeals is a test which is wholly improper and may not be utilized to sustain a decision rendered by an administrative agency.

b. *Presumably*: The Court of Appeals admits that IPC sets the drivers' wages and solely negotiates with the Union. However, the Panel goes on to state that "Goodrich reimburses IPC [pursuant to the contract in effect between IPC and Goodrich] and *presumably* has some control over those wages since it can rescind the IPC contract on thirty days notice." (Appendix p. A7). Once again, the measure proffered by the NLRB and adopted by the Court is wholly inappropriate when viewed in light of the strict standard enunciated in *Universal Camera Corp.* Here, the Court has referred to the fact that Goodrich can "presumably" exercise control over wages. It is submitted to this Court that the standard announced in *Universal Camera Corp.* completely rejects the use of a presumption as being a basis for an administrative agency's determination.

Universal Camera Corp. stands for the proposition that the record itself must contain substantial evidence (pri-

mary fact) that Goodrich exercised control over the wages of IPC personnel. The administrative agency and subsequently the Court of Appeals cannot construct a determination based on quicksand. Permitting the administrative agency to base decisions on such assumptions as "presumably" and the previous mentioned "may" will eliminate the burden contained in §10(e) of the NLRA and permit administrative agencies to render decisions based on mere whim which are at best arbitrary. *Universal Camera Corp.* demands that there be hard fact in the record to support the determination rendered by the NLRB. Here, the record and the Panel's opinion is devoid of the existence of a single fact which would qualify as substantial evidence to support their joint employer determination.

In the instant action, the decision of the NLRB will have far-reaching and extremely adverse economic effects on IPC and Goodrich. Hence, the reason for the strict requirement of proof underlying the rule as announced in *Universal Camera Corp.* In order to administratively destroy relationships that have existed between corporations for many years, administrative agencies are required to present strict proof that instances such as common control of wages, and common control of labor relations have, in fact, occurred. Here, the record is wholly devoid of even a scintilla of evidence to support the conclusion reached by the NLRB and sustained by the Panel. The Court of Appeals and the agencies have chosen to use assumptions and presumptions to find the existence of control. Such a "test" is wholly foreign to the dictates of *Universal Camera Corp.*

c. *Inevitably*: In its Opinion, the Court of Appeals once again admits that IPC controls the direct labor relations relative to its employees; however, then qualifies this finding by stating that "Goodrich's control of working

conditions will *inevitably* involve it in labor relations." (Appendix p. A8). Here, once again, the determination made by the NLRB and sustained by the Court of Appeals is anchored on shifting sands. The use of a test wherein companies may be found to be joint employers because they "inevitably" may become involved in common labor relations once again is completely foreign to the dictates of *Universal Camera Corp. Universal Camera Corp.* requires the existence of *absolute fact* in the record which supports a determination by the NLRB. Here, the Court of Appeals has failed to cite one fact in the record which will establish the existence of a co-employer relationship. Hence, the usage of "inevitable" to mask this fatal deficiency. The Court has been wholly unable to identify the existence of a single fact which will substantiate its conclusion that Goodrich controls what it refers to as working conditions.

d. *Work Rules*: The Court of Appeals in its Opinion refers to the usage of IPC and Goodrich of "extensive work rules which are set out in an operating manual issued to drivers by Goodrich." (Appendix p. A7). The record completely destroys this conclusion. The record shows that the operating manual was issued to the drivers in question by a prior Goodrich contractor, American Stevedoring. The record also indicated quite clearly that IPC has never utilized this document since it has commenced its operations in Tulsa. It solely applied to the time period the prior driver service company was under contract with Goodrich. The NLRB was unable to show a single instance wherein the manual has been used since IPC commenced operations in Tulsa.

The foregoing paragraphs illustrate quite clearly that the Court of Appeals has made a co-employer determination based on a finding that (1) "Goodrich *may* on occasion

get into" the area of labor relations, (2) "Goodrich . . . *presumably* has control over wages", and (3) "while IPC controls the direct labor relations, Goodrich's control of working conditions will *inevitably* involve it in labor relations." Thus, the Court of Appeals has permitted the NLRB to make a finding of fact that IPC and Goodrich are, in fact, joint employers on the basis of a "may", a "presumably", and an "inevitably." Such a determination is in direct contradiction of §10(e) of the NLRA and the dictates of this Court as contained in *Universal Camera Corp.*

CONCLUSION

The Eighth Circuit Court of Appeals has abandoned the test enunciated in *Universal Camera Corp. v. NLRB.* The Court of Appeals has sustained the determination of an administrative agency which is based on pure presumption. The Court's action is wholly violative of the standard contained in Section 10(e) of the National Labor Relations Act. Allowing such a decision to stand will destroy the wisdom and logic enunciated by Justice Frankfurter in *Universal Camera Corp.* and its progeny.

For all of the above reasons, the Writ of Certiorari should be granted.

Respectfully submitted,

By WILLIAM W. ALLPORT, ESQ.
And DAVID R. KNOWLES, ESQ.
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APPENDIX

OPINION OF THE COURT OF APPEALS FOR THE EIGHTH CIRCUIT

(Filed August 25, 1981)

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 80-1758

INDUSTRIAL PERSONNEL CORP.,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

Petition for Review of an Order of the
National Labor Relations Board.

No. 80-1759

THE B. F. GOODRICH COMPANY,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

Petition for Review of an Order of the
National Labor Relations Board.

Submitted: June 15, 1981
Filed: August 26, 1981

Before LAY, *Chief Judge*, MCMILLIAN, *Circuit Judge*, and LARSON,* *Senior District Judge*.

LARSON, *Senior District Judge*.

Petitioners Industrial Personnel Corp. (IPC) and the B. F. Goodrich Company (Goodrich) ask this Court to review and set aside a decision and order of the National Labor Relations Board (Board) entered July 28, 1980, holding that IPC and Goodrich are joint employers and that, as a result, IPC and Goodrich's refusal to bargain with the General Drivers and Helpers Local Union 823 (Union) on a joint-employer basis constituted a violation of section 8(a)(1) and section 8(a)(5) of the National Labor Relations Act, 29 U.S.C. § 158(a)(1), (5).[1] The Board has cross-applied for enforcement of its order. We deny the petition to set aside the Order and grant its enforcement.

IPC supplies various transportation services for companies throughout the country. Goodrich primarily manufactures tires, chemicals, and engineered products. To facilitate delivery of its products in the area of Tulsa, Oklahoma, Goodrich contracted with IPC to provide it with drivers for its trucking operation. In a nutshell, the agreement provides that IPC will hire drivers and handle most labor relations, while Goodrich will oversee the day-to-day

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*Earl R. Larson, United States District Judge, District of Minnesota, sitting by designation.

1. Section 8(a) provides in pertinent part:

It shall be unfair labor practice for an employer—

(1) to interfere with, restrain or coerce employees in the exercise of the rights guaranteed in section 7 of this title;

. . .

(5) to refuse to bargain collectively with the representatives of his employees.

Section 7 of the National Labor Relations Act, 29 U.S.C. §158, grants employees the right to bargain collectively through representatives of their own choosing.

operations of informing the drivers of their destinations and routes. Goodrich leases the trucks. Through its involvement, Goodrich complies with the Interstate Commerce Commission regulations that allow it to be classified as a "private carrier." Goodrich reimburses IPC for all of its expenses plus its service charges.

When the arrangement began in 1978, there was an existing contract between the Union and IPC. In August of 1979 the Union filed a representation petition seeking certification as the collective bargaining representative of drivers employed by both companies as joint employers. The companies opposed the petition on the basis of the existing contract and the fact that IPC was the sole employer. In October of 1979 the Board's Acting Regional Director found that IPC and Goodrich were joint employers. In December, after an election, the Union was certified as the bargaining representative for drivers employed by the joint employers.

Subsequently the companies refused to bargain and the Union filed an unfair labor practice charge in February of 1980. The Board's General Counsel issued a complaint in March; the answer alleged that the companies were not joint employers. The Board granted its General Counsel's motion for summary judgment in July of 1980. A cease and desist order was issued at the same time. The companies appealed to this Court.

The jurisdiction of this Court is invoked pursuant to Section 10(f) of the National Labor Relations Act, 29 U.S.C. §160(f).[2] Although the alleged unfair labor prac-

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2. IPC and Goodrich have taken advantage of the following provision in §10(f):

> Any person aggrieved by a final order of the Board . . . may obtain a review of such order in any United States court of appeals in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business.

tice occurred in Tulsa, Oklahoma within the jurisdiction of the Court of Appeals for the Tenth Circuit, IPC and Goodrich have obviously chosen this circuit in order to rely on the decision in *Pulitzer Publishing Co. v. NLRB*, 618 F.2d 1275 (8th Cir. 1980).

The Eighth Circuit recently reiterated its test to determine whether a union's joint employer claim is valid. The test applied was

> whether the total relationship of two nominally separate businesses reveals: "(1) some functional interrelation of operations, (2) centralized control of labor relations, (3) common management, and (4) common ownership or financial control. While none of these factors, separately viewed, have been held controlling, stress has normally been laid upon the first three factors which reveal functional integration with particular reference to whether there is centralized control of labor relations."

Miscellaneous Drivers Local 610 v. NLRB, 624 F.2d 831, 833 (8th Cir. 1980) (per curiam) quoting *Pulitzer Publishing Co. v. NLRB*, 618 F.2d 1275, 1279 (8th Cir. 1980).

Pulitzer involved a reversal of a Board finding that a publisher and delivery company were joint employers. The facts are quite similar to the present case. There was a contractual relationship resulting in some functional interrelation of operations. The publisher determined where deliveries were made, the trucks bore the publisher's logo, and the contract was a cost-plus one. On the other hand, the deliverer hired and managed the employees, exercised day-to-day control, paid for insurance and owned the trucks.

Local 610 involved the affirmance of a Board finding that a funeral home and a service which provided drivers

and vehicles to the home and to others were not joint employers. The home obtained services by calling the driver service. The driver service then dispatched the driver and vehicle to the location specified by the home. The service hired employees, paid them, and billed the home a flat amount for driver and vehicle.

A third recent Eighth Circuit case, *Russom v. Sears, Roebuck & Co.*, 558 F.2d 439 (8th Cir. 1977), is also factually similar to the present case. There this Court affirmed a district court finding that Sears and an appliance repair service company were not joint employers. All of the service company's business was with Sears, Sears did the training, the employees wore Sears uniforms and received employee discounts at Sears. The contract was cost-plus. The companies, however, were not interlocking; the service company was in total control of wages and working conditions, hired and fired employees, paid for insurance and owned and operated its own trucks and equipment. Although Sears may have made some suggestions concerning operations, the service company made its own decisions. It should also be pointed out that although the Court determined whether the two companies were co-employers, the issue being determined was whether Sears was bound under the contract signed between the service company and the Union. The service company had gone out of business and its employees were absorbed by Sears—without their negotiated pension rights. So this was not a decision in the same posture as the present case and *Pulitzer*.

At oral argument this Court was made aware of the Ninth Circuit's recent decision in *Kaylor v. Crown Zellerbach, Inc.*, 643 F.2d 1362 (9th Cir. 1981). There the Ninth Circuit affirmed a district court finding on summary judgment that appellants had shown insufficient facts to hold

Crown liable under a joint employer theory. Crown ran an in-house trucking operation to ship its goods around San Francisco Bay area and contracted with various companies to supply it with drivers for its trucking operation. Crown had full control over the dispatch, routing, and use of its trucks and the hours of service of the drivers. Nevertheless, we agree with the Board that, due to the circumstance that the joint employer question in *Kaylor* was disposed of by summary judgment, the full factual basis for the Ninth Circuit's decision cannot be ascertained. Therefore, comparisons with the present case are questionable. Even if the facts were identical, this Court is not bound by the Ninth Circuit's decision. *Kaylor,* like *Russom,* was in a slightly different posture than the present case and *Pulitzer.* At issue in *Kaylor* was whether Crown had breached a contractual duty to employ the drivers of the various driver supply companies that had previously contracted with Crown. In the present case and in *Pulitzer,* the issue was whether Goodrich and Pulitzer were required to bargain with their drivers' unions.

In at least one previous case, *Ace-Alkire Freight Lines v. NLRB,* 431 F.2d 280 (8th Cir. 1970), this Court has affirmed the Board's finding that two companies engaged in the trucking business were joint employers. One company was a common carrier and the other leased trucks to the carrier. The lessor interviewed prospective employees, sent possibilities on to the carrier, and paid the wages. The carrier set age and experience requirements, reserved the right to reject drivers, dispatched drivers, and monitored their logs.

The standard to be applied in this appeal of a finding of fact by an administrative agency is whether the Board's finding that the companies are joint employers is supported by substantial evidence in the record as a whole. *See Uni-*

versal Camera Corp. v. NLRB, 340 U.S. 474, 487-88 (1951). With this standard in mind, and the test adopted by this Circuit to determine whether a joint employer relationship exists, we reach the following conclusions. To a significant degree, there is functional interrelation of operations between the two companies; IPC hires the drivers and Goodrich determines the conditions of employment. While IPC interviews, hires, disciplines, pays, and discharges employees, Goodrich controls the day-to-day operations of the trucking group. Goodrich determines the destination of the drivers and what routes they take. Drivers are required to call their location in to Goodrich each day, and their logs are sent to Goodrich.

Although there seems to be little centralized control of labor relations—IPC does most of it—Goodrich may on occasion get into this area due to its control over day-to-day operations. The Board found that since Goodrich has such control over day-to-day operations, it will inevitably handle labor problems. Extensive work rules are set out in an operating manual issued to drivers by Goodrich. Goodrich reserved a right to reject employees that do not comport with Department of Transportation (DOT) regulations and DOT requires Goodrich to annually review each driver's record to determine whether that driver meets minimum requirements for safe driving. While IPC sets the drivers' wages, Goodrich reimburses IPC and presumably has some control over those wages since it can rescind the IPC-Goodrich contract on thirty days' notice. Finally, although the control of labor relations is one factor to be considered, it is not controlling in and of itself.

Reviewing the factors as a whole, it is our feeling that there is significant functional interrelation of operations between the two companies. This is the factor largely relied upon by the Board. While IPC controls the direct

labor relations, Goodrich's control of working conditions will inevitably involve it in labor relations. As a result, we think that the two companies should be compelled to bargain as joint employers.[3]

Pulitzer can be distinguished from the present case on several different grounds. First, in *Pulitzer* the delivery service exerted much more daily control over the employees than IPC did in this case. The delivery service in *Pulitzer* maintained its own facility where its drivers punched in and picked up their trucks. Assistant managers employed by the delivery service directed the drivers' routes and procedures according to a "run sheet" received from the Pulitzer dispatcher. In *Pulitzer*, if the drivers encountered any difficulty during the course of delivery, they were to report to the delivery service's assistant managers. In the present case, drivers are supposed to call Goodrich. Another distinguishing factor between the two cases involves the ownership of trucks. The fact that the delivery service in *Pulitzer* owned its own trucks and paid its own liability and property damage insurance supported its contention that it should be treated as a separate rather than a joint employer. In our case, Goodrich leases trucks from Ryder Rental and insures them itself; IPC merely provides drivers.

Accordingly, Goodrich's and IPC's petition for review and for the setting aside of the Board's decision are denied and the Board's order is enforced.

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS, EIGHTH CIRCUIT.

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3. We agree with the Board's finding that there is no common management, ownership or financial control but we find these facts are not crucial to our determination.

DETERMINATION OF THE NATIONAL LABOR RELATIONS BOARD REGION 16

(Dated October 26, 1979)

Case No. 16-RC-8003

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

B. F. GOODRICH COMPANY,
Employer

and

INDUSTRIAL PERSONNEL CORPORATION,
Employer

and

GENERAL DRIVERS AND HELPERS LOCAL UNION 823, affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,
Petitioner.

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:[1]

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.[2]

3. The labor organization(s) involved claim(s) to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:[3]

> All truck drivers employed from the Employer's Tulsa, Oklahoma terminal, excluding clerks, dispatchers, all other employees and supervisors as defined in the Act.

DIRECTION OF ELECTION[4]

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately before the date below, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the

polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by General Drivers and Helpers Local Union 823, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, 2 copies of an election eligibility list, containing the names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned/Officer-in-Charge, Subregion, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the National Labor Relations Board, 8A24 Federal Office Building, 819 Taylor Street, Fort Worth, Texas 76102 on or before November 2, 1979. No extension of time to file this list may be granted, nor shall the filing of a request for review operate to stay the filing of such list except in extraordinary circumstances. Failure

to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570. This request must be received by the Board in Washington by November 8, 1979.

/s/ WILTON WALDROP
Acting Regional Director,
Region 16

Dated October 26, 1979 at Fort Worth, Texas.

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1. All parties submitted briefs which have been considered.

2. Industrial Personnel Corporation is a West Virginia Corporation operating in Tulsa, Oklahoma where it is engaged in providing labor services. During the past ten months it has derived in excess of $50,000 in gross revenue from said Tulsa Business for providing driver services as a direct link in interstate commerce.

B. F. Goodrich Company is a New York corporation with its principal place of business in Akron, Ohio where it is engaged in the manufacture and sale of tires, tire products, chemicals and industrial products. During the past twelve months it has shipped goods valued in excess of $50,000 directly to customers located outside the State of Ohio.

3. The Petitioner seeks a unit involving the Employer's drivers located at Tulsa, Oklahoma. There is some bargaining history between Industrial Personnel Corporation and the Petitioner and a collective bargaining contract is in effect.

Contract Bar

The Petitioner has been recognized by Industrial Personnel Corporation (IPC) as the collective bargaining agent for the 12 regular drivers and three casual drivers located at the Tulsa, Oklahoma terminal. A collective bargaining agreeement is effective between Petitioner and IPC from November 11, 1978 through May 22, 1980.

Petitioner has now filed a petition requesting certification. Clearly the mere fact of recognition and the existence of a con-

tract does not preclude Board certification. Even if a contract exists, a union has a right to request the benefits of certification at any time. *General Box Company*, 82 NLRB 678. The position of IPC is that the contract should act as a bar to the petition because the Petitioner has admitted wanting better benefits from Goodrich and foresees a better strike target in same. IPC cites *National Electric Coil*, 199 NLRB 1017, in support of that proposition. The undersigned concludes that IPC's arguments are misplaced and that no evidence of the nature considered in *National Electric Coil, supra*, has been offered in this case. I find that the existing collective bargaining agreement falls under the *General Box* decision and thus is not a bar to the petition.

Joint Employer

The primary issue in this case is whether B. F. Goodrich Company (Goodrich) and IPC are joint employers of the Tulsa terminal employees. Goodrich, in the business of manufacturing tires and chemical products, transports its own products to its customers and leases its tractors and trailers from Ryder Truck Rental in Tulsa, Oklahoma. Rather than hire drivers themselves, Goodrich contracted with IPC to provide labor services. To this extent IPC negotiated a contract November 11, 1978 with Local 823 of the Teamsters.

The record evidence reveals basically that the companies involved have no common financial or ownership control and no common management. IPC and Goodrich have done business together in the past. In 1974 they contracted to lease drivers. When Goodrich decided to open a terminal in Tulsa, they approached IPC with the business. When IPC refused to provide a resident manager nearby, Goodrich contracted with American Stevedoring in 1977. Later, American Stevedoring's resident manager resigned and Goodrich again approached IPC who agreed to place a resident manager in Tulsa effective November 13, 1978. The labor relations regarding the truck drivers are centralized almost solely with IPC. The record reveals that IPC recruits, hires, and processes the applications of employees as well as testing, paying, disciplining and discharging them. Other than controlling their direct labor relations, IPC has little contact with the employees. Testimony indicates that although IPC maintains a resident office in Tulsa, the manager is often unavailable.

Goodrich, in order to maintain its private carriage status, as per Department of Transportation regulations, reserves to itself sole control of the day-to-day operations. The drivers call a toll free number in Akron, Ohio at Goodrich and receive instructions from a dispatcher there as to the next trip. Drivers call Goodrich daily when on a run. Goodrich gives them their schedules and designates the routes to the customers. If a driver has a problem or an accident on the road, he is supposed to contact Goodrich for further instructions. Furthermore, drivers have access to the employees' stores, the rental trucks carry Goodrich insignia, and all log books prepared by the drivers are sent directly to Goodrich weekly.

Although responsibility for labor relations lies primarily with the leasing agency, since Goodrich has so much day-to-day control, inevitably Goodrich will handle labor problems. Goodrich has the right to reject employees. IPC agrees but argues nevertheless that Goodrich cannot require an employee be removed from the payroll. This may be true, but if Goodrich rejects an employee, he will not be working and not be paid unless he moves to another location for IPC. Further, the record testimony indicates that Goodrich has participated in the employees' reimbursement for required physical examinations.

The general criteria used to determine joint employer status include common ownership or financial control, common management, interrelation of operation and centralized control of labor relations. *Sakrete of Northern California, Inc. v. N.L.R.B.*, 332 F.2d 902 (C.A. 9 1964), cert. denied 379 U.S. 961 (1965). The record reflects no evidence of common ownership or financial control and primarily centralized labor relations in IPC. The companies have no common officers or management. The record evidence clearly indicates the existence of interrelation of operation between IPC and Goodrich. IPC is responsible for the drivers' personnel problems but very little else. Goodrich has almost total control of the drivers' work schedules and activities. Any direct supervision they receive on the road comes from the Goodrich toll free telephone number they dial.

Such day-to-day minute control of the operations may cause a company to incur a joint employer status. The exclusive control of the employee's daily work activities by Goodrich results in Goodrich and IPC being joint employers. *Pomeroy's Inc.*, 232 NLRB 95. The testimony and IPC exhibit No. 22, which is the current expression of the agreement between IPC and Goodrich, clearly reflect that Goodrich intended to maintain sole control of the work activities of the employees. If two employers share or co-determine essential terms or conditions of employment, they will be found to be joint employers. *Sinclair & Valentine Co., Inc.*, 238 NLRB No. 101; *The Greyhound Corporation*, 153 NLRB 1488, enfd. 368 F.2d 778 (C.A. 5); *Manpower, Inc.*, 164 NLRB 287. In this case Goodrich and IPC function as an integrated operation with IPC as an essential element in Goodrich's marketing and transportation process.

Based on the record evidence and the admitted control of the operational activities of the drivers, I find IPC and Goodrich to be joint employers under the Act. See *Floyd Epperson & United Dairy Farmers, Inc.*, 202 NLRB 23, enfd. 491 F.2d 1390; *AMP, Inc.*, 218 NLRB 33, and *Conductron Corporation*, 183 NLRB 419.

4. In accordance with Section 102.67(b) of the Board's Rules and Regulations, as amended, all parties are specifically advised that the Regional Director will conduct the election when scheduled even if a request for review is filed unless the Board expressly directs otherwise.

DECISION AND ORDER OF THE NATIONAL LABOR RELATIONS BOARD

(Dated July 28, 1980)

Case 16—CA—8925

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
250 NLRB No. 119 D—6630

Akron, OH and Tulsa, OK

B. F. GOODRICH COMPANY

and

INDUSTRIAL PERSONNEL CORPORATION

and

GENERAL DRIVERS AND HELPERS LOCAL UNION 823, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

DECISION AND ORDER

Upon a charge filed on February 1, 1980, by General Drivers and Helpers Local Union 823, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, and duly served on B. F. Goodrich Company and Industrial Personnel Corporation, herein called Respondents, Goodrich, or IPC, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 16, issued a complaint on March 12, 1980, against Respondents, alleging that Respondents have engaged in and were en-

gaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended.[1] Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on December 31, 1979, following a Board election in Case 16—RC—8003, the Union was duly certified as the exclusive collective-bargaining representative of employees employed by Respondents as joint employers in the unit found appropriate,[2] and that, commencing on or about December 31, 1979, and at all times thereafter, Respondents have refused, and continue to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On March 18 and 21, 1980, Respondents filed their answers to the complaint admitting in part, and denying in part, the allegations in the complaint.

On April 28, 1980, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on May 1, 1980, the Board issued an order transferring the proceeding to the Board and a Notice To

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1. The complaint erroneously refers to the Union as General Drivers and Helpers Local Union 828, rather than as General Drivers and Helpers Local Union 823. On April 8, 1980, an erratum to the complaint was issued which corrected this error.

2. Official notice is taken of the record in the representation proceeding, Case 16—RC—8003, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems, Inc.*, 166 NLRB 938 (1967), enfd. 388 F.2d 683 (4th Cir. 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), enfd. 415 F.2d 26 (5th Cir. 1969); *Intertype Co. v. Penello*, 269 F.Supp. 573 (D.C.Va. 1967); *Follett Corp.*, 164 NLRB 378 (1967), enfd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Thereafter, Goodrich filed a memorandum in opposition to the General Counsel's Motion for Summary Judgment, and IPC filed a response to Notice To Show Cause and memorandum in support thereof.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Goodrich is engaged in the manufacture of tires and other products. IPC is engaged in operating tractor trailer vehicles owned or leased by customers. Since November 1978, IPC has provided such services for Goodrich at a Tulsa, Oklahoma, location. On November 11, 1978, IPC and the Union entered into a collective-bargaining agreement which was to expire May 22, 1980, covering 12 drivers employed at the Tulsa facility. On August 24, 1979, the Union filed its representation petition seeking certification as the collective-bargaining representative of these employees and naming both Goodrich and IPC as the Employer.

In its answer to the complaint, Goodrich admits it has informed the Union it will not bargain with it, but denies the validity of the Union's certification. Specifically, Goodrich denies it is either an employer or a joint employer with IPC of the employees in the unit which the Union was certified to represent. Goodrich also denies that on or about December 31, 1979, the Union requested bargain-

ing.[3] IPC, in its answer, admits it is an employer of the employees in the unit, but denies that it provides labor services for, or is a joint employer with, Goodrich.[4] IPC also denies that it was served with the charge in this proceeding, that the Union has requested bargaining, that either it or Goodrich has refused to bargain with the Union, and that the Union is the exclusive collective-bargaining representative of its employees in an appropriate unit.[5] In its response to the Notice To Show Cause, IPC additionally

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3. Goodrich alleges in its answer that it is without knowledge concerning the truth of the complaint's jurisdictional allegations regarding IPC, and is without knowledge whether IPC was served with the charge in this proceeding. However, service of the charge on Goodrich as a joint employer with IPC constitutes service on IPC, *Ref-Chem Company and El Paso Products Co., Individually and as Co-Employers,* 169 NLRB 376 (1968), and IPC in its answer admits the jurisdictional allegations concerning it. Goodrich also alleges that it is without knowledge of the status of the Union as a labor organization within the meaning of Sec. 2(5) of the Act, and of the appropriateness of the unit determined to be appropriate by the Acting Regional Director. Goodrich, however, both participated in the representation hearing in Case 16—RC—8003 and has stipulated that the Union is a labor organization within the meaning of Sec. 2(5) of the Act. Goodrich further alleges it is without knowledge that on December 6, 1979, the Union became the exclusive collective-bargaining representative of employees in the appropriate unit through a Board-conducted election, and that IPC has refused to bargain with the Union. In this regard, the General Counsel has attached to the Motion for Summary Judgment a tally of ballots and certification of conduct of election signed by W. W. Allport for both Goodrich and IPC. Also attached to the Motion for Summary Judgment is a letter from IPC to the Union dated January 23, 1980, discussed *infra,* denying that IPC and Goodrich are joint employers.

4. IPC denies in its answer that Goodrich and IPC are joint employers engaged in commerce within the meaning of Sec. 2(6) and (7) of the Act. IPC admits that it is itself engaged in interstate commerce, and that Goodrich is engaged in manufacturing and had during the past 12 months shipped goods in excess of $50,000 directly to customers located outside Ohio, its principal place of business. We therefore deem IPC's denial as a denial of joint employer status.

5. IPC alleges in its answer it is without knowledge of certain jurisdictional information alleged concerning Goodrich. Goodrich has admitted this information.

argues that the Union's representation petition in Case 16—RC—8003 did not raise a question concerning representation, and that it has bargained, and is continuing to bargain, with the Union. IPC requests a hearing to determine whether it has breached its bargaining obligation.

A review of the record reveals that on September 18, 1979, a hearing was conducted in Case 16—RC—8003 to determine whether Goodrich and IPC were joint employers of the employees in the unit the Union sought to represent, and whether the election was barred by an existing collective-bargaining agreement between IPC and the Union covering these employees. On October 26, 1979, the Acting Regional Director for Region 16 issued a Decision and Direction of Election in which he found that there was no bar to the election and that Goodrich and IPC were joint employers.[6] On November 8, 1979, Goodrich and IPC filed requests for review of the Decision and Direction of Election which were denied by the Board on November 28, 1979.[7] Thereafter, on December 6, 1979, an election was conducted pursuant to the Decision and Direction of Election, in which the eight employees who voted cast ballots for the Union.[8]

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or

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6. In reaching these conclusions the Acting Regional Director relied in part on *General Box Company*, 82 NLRB 678 (1949), and *Floyd Epperson and United Dairy Farmers, Inc.*, 202 NLRB 23 (1973).

7. A motion for reconsideration filed by IPC on December 12, 1979, was denied on December 27, 1979.

8. The election was a mail ballot election. The ballots were mailed on November 21, 1979, and counted on December 6, 1979.

could have been litigated in a prior representation proceeding.[9]

Both Respondents deny that the Union has requested bargaining. Although the General Counsel has presented no evidence of such a request, it has attached to the Motion for Summary Judgment copies of two letters to the Union in which Respondents state that Goodrich is not an employer of employees in the unit which the Union was certified to represent. In one letter, dated January 17, 1980, Goodrich informed the Union it had no duty to bargain with it because Goodrich believed the Acting Regional Director's findings concerning its joint employer status were erroneous. In the other letter, dated January 23, 1980, IPC responded to a grievance filed by the Union which named IPC and Goodrich as joint employers. IPC stated that it would process the grievance "in its capacity as [the grievant's] sole employer." (Emphasis supplied.) On the basis of these letters we find that the Respondents placed the Union on notice that a request for bargaining by the Union would have been futile and was therefore unnecessary.[10] Furthermore, each letter constitutes a refusal to bargain on the part of both Respondents for which each is jointly and severally liable.[11] We therefore find without merit IPC's argument that it has not refused to bargain with the Union

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9. See *Pittsburgh Plate Glass Co. v. N.L.R.B.*, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

10. *GAF Corporation*, 218 NLRB 265 (1975).

11. It is well settled that joint bargaining entities, whether employers or unions, are treated by the Board as single *de jure* entities, and that the conduct and knowledge of one is imputed to the other. *U. S. Pipe & Foundry Company and Winfrey Enterprises, Inc.*, 247 NLRB No. 12, sl. op. (ALJD) at p. 9 (1980). Thus, IPC's denial of Goodrich's status as an employer is equivalent to a statement by Goodrich that it has no duty to bargain with the Union. Such a statement by Goodrich violates Sec. 8(a)(5) of the Act.

because it has at all times bargained with it on an individual basis. Also without merit is IPC's denial that it was served with the charge in this proceeding. Goodrich admits in its answer that Goodrich was served with the charge, and service on one joint employer constitutes service on the other.[12]

All issues raised by Respondents in this proceeding were or could have been litigated in the prior representation proceeding, and the Respondents do not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor do they allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that Respondents have not raised any issue which is properly litigable in this unfair labor practice proceeding. Accordingly, we shall deny IPC's request for a hearing and grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

Findings of Fact

I. The Business of Respondents

B. F. Goodrich Company is a New York corporation with its principal place of business in Akron, Ohio, where it is engaged in the manufacture and sale of tires, tire products, chemicals, and industrial products. During the past 12 months it has shipped goods valued in excess of $50,000 directly to customers located outside the State of Ohio.

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12. *Ref-Chem Company and El Paso Products Co., supra* at fn. 3.

Industrial Personnel Corporation is a West Virginia corporation operating in Tulsa, Oklahoma, where it is engaged in providing labor services. During the past 10 months it has derived in excess of $50,000 in gross revenue from said Tulsa business for providing driver services as a direct link in interstate commerce.

We find, on the basis of the foregoing, that Respondents are, and have been at all times material herein, employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. The Labor Organization Involved

General Drivers and Helpers Local Union 823, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America is a labor organization within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

A. *The Representation Proceeding*

1. The unit

The following employees of Respondents constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All truck drivers employed from the Joint Employers' Tulsa, Oklahoma, terminal, excluding clerks, dispatchers, all other employees and supervisors as defined in the Act.

2. The certification

On December 6, 1979, a majority of the employees of Respondents in said unit, in a secret-ballot election con-

ducted under the supervision of the Regional Director for Region 16, designated the Union as their representative for the purpose of collective bargaining with Respondents. The Union was certified as the collective-bargaining representative of the employees in said unit on December 31, 1979, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. *The Request To Bargain and Respondent's Refusal*

Commencing on or about January 17, 1980, and continuing at all times thereafter to date, Respondents have refused, and continue to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that Respondents have, since January 17, 1980, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of Respondents set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that Respondents have engaged in and are engaging in unfair labor practices within the meaning

of Section 8(a)(5) and (1) of the Act, we shall order that they cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondents commence to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962); *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817; *Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

Conclusions of Law

1. B. F. Goodrich Company and Industrial Personnel Corporation are employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. General Drivers and Helpers Local Union 823, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America is a labor organization within the meaning of Section 2(5) of the Act.

3. All truck drivers employed from the Joint Employers' Tulsa, Oklahoma, terminal, excluding clerks, dispatchers, all other employees and supervisors as defined in

the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since December 31, 1979, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about January 17, 1980, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondents in the appropriate unit, Respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondents have interfered with, restrained, and coerced, and are interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby have engaged in and are engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondents, B. F. Goodrich Company, Akron, Ohio, and Industrial Personnel Corporation, Tulsa, Oklahoma, severally and jointly and their respective officers, agents, successors, and assigns, shall:

1. Cease, and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with General Drivers and Helpers Local Union 823, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America as the exclusive bargaining representative of its employees in the following appropriate unit:

> All truck drivers employed from the Joint Employers' Tulsa, Oklahoma, terminal, excluding clerks, dispatchers, all other employees and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at their Tulsa, Oklahoma, and Akron, Ohio, places of operations copies of the attached notice marked "Appendix."[13] Copies of said notice, on forms provided

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13. In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL RELATIONS BOARD."

by the Regional Director for Region 16, after being duly signed by Respondents' representatives, shall be posted by Respondents immediately upon receipt thereof, and be maintained by them for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondents to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 16, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

Dated, Washington, D.C. July 28, 1980

HOWARD JENKINS, JR., Member
JOHN A. PENELLO, Member
JOHN C. TRUESDALE, Member
(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with General Drivers and Helpers Local Union 823, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the

exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All truck drivers employed from the Joint Employers' Tulsa, Oklahoma, terminal, excluding clerks, dispatchers, all other employees and supervisors as defined in the Act.

B. F. GOODRICH COMPANY AND INDUSTRIAL PERSONNEL CORPORATION
(Employer)

Dated ..... By .....
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Federal Office Building, Room 8A24, 819 Taylor Street, Fort Worth, Texas 76102, Telephone 817—334—2921.

DECISION OF THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT RE PETITION FOR REHEARING

(Dated October 5, 1981)

No. 80-1758

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

INDUSTRIAL PERSONNEL CORP.,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

Petition for Review of Order of National Labor Relations Board

The Court, having considered petitioner's petition for rehearing and suggestions for rehearing en banc and being now fully advised in the premises, hereby orders the petition for rehearing and suggestions for rehearing en banc denied.

October 5, 1981

DECISION OF THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT RE ISSUANCE OF MANDATE TO BE STAYED

(Dated October 26, 1981)

No. 80-1758

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

INDUSTRIAL PERSONNEL CORP.,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

Petition for Review of Order of National Labor Relations Board

On motion of Petitioner, it is now here ordered that the issuance of the mandate herein be, and the same is hereby, stayed for a period of sixty days from this date. If within that time there is filed with the Clerk of this Court a certificate of the Clerk of the Supreme Court of the United States that a petition for writ of certiorari has been filed, the stay hereby granted shall continue until the final disposition of the case by the Supreme Court.

October 26, 1981